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Minnesota Blue Sky Law

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THE MINNESOTA "BLUE SKY" LAW

PRIOR to 1910 a person could engage in the business of selling stocks, bonds, and other securities without limitation or restriction, except with reference to those of certain public service corporations. There were no statutes regulating either the seller or the sale of such property. Under this situation, people throughout the country lost each year thousands of dollars, by investing in stocks, bonds, and other securities offered by unscrupulous or misguided dealers and by dreamers and promoters of worthless enterprises. To remedy the evil and to protect the public from fraud, the legislatures of at least thirty states have enacted in recent years statutes known as "Blue Sky Laws," providing in some instances for the regulation of sellers of such securities, in others, of the sale of such property, and in still others, for both purposes. Prior to the enactment of these statutes, three or more persons could organize a corporation by filing articles of incorporation with the officer designated by law and paying the required fee. Thereupon they could proceed to issue and sell the corporate stock regardless of the value thereof, or whether the corporation had any future prospects, bright or otherwise. As a consequence the following conditions existed:

1. Numerous promotions were in progress in which commissions and other expenses incidental to the sale of the stock amounted to thirty, forty, or fifty per cent, and even more, of the selling price of the stock.

2. Mining and oil companies and various other fictitious enterprises were selling stock to secure money with which to develop properties not worth developing.

3. Many stocks and other kinds of securities were sold at grossly excessive prices and without regard to their actual value.

4. Men with "ideas" formed companies and took fifty-one per cent of the stock for their "ideas," the other forty-nine being sold to finance the project. Very often the "ideas" proved mere dreams and valueless, and only served to swell the sum total of business failures and the number of stock purchasing victims.

5. Companies were formed to manufacture or exploit patented appliances, articles and devices which were mechanically imperfect or impracticable.

6. There was no one to question the propriety or legality of the issuance of large blocks of stock for "good-will" or other similar intangible assets, and it was not uncommon to find new concerns whose only asset consisted of "good-will."

7. Stocks of concerns which were insolvent could be legally offered and sold, subject only to the restrictions against actual fraud.

8. Grossly excessive valuations were claimed for assets in order to justify a given price for the stock or to cover up losses in operation or other impairments.

9. Enterprises which were impossible of success were being promoted.

10. Foreign corporations which had no offices or places of business or permanent representative within a state sent their glib-tongued agents therein to sell their stocks and securities, and were often successful to a remarkable degree. If an investor found that he had been defrauded by false and fraudulent representations, he was compelled to seek redress in some foreign jurisdiction, or submit to his loss without complaint.

11. Deliberately planned frauds were common and often very remunerative to the promoters.

It was to guard against the evils growing out of such conditions, and thereby protect the public against the various brands of fraud arising therefrom, that the "Blue Sky Laws" have been enacted in so many states. The reasons for the legislation are well stated in the opinion of the Court in the case of *Standard Home Co. v. Davis*,¹ in these words:

¹ (1914) 217 Fed. 904.

"Experience has demonstrated the fact that some of the gross-est frauds have been perpetrated on the public by investment companies by extravagant expenditures for salaries, agents' commissions, and other apparently legitimate purposes through officers who had practically nothing invested in the association, and whose character and reputation stamped them as adventurers and cheats. . . The dockets of the national courts have been crowded for the past few years with criminal prosecutions of persons charged with the use of the mails of the United States in carrying out fraudulent schemes by so-called investment companies and persons offering allurements to get rich quick. But those courts are only clothed with jurisdiction to prosecute those who, in carrying out their fraudulent schemes, make use of the mails, and then only after the commission of the offense. This necessarily affects only a small portion of those engaged in such schemes, and can in no wise act as a preventive. The states alone can provide for the prevention and punishment of all who commit frauds, although the mails are not used for their accomplishment, and enact laws to prevent the commission of these crimes. Legislation to prevent crime is of greater benefit to society than the punishment of the offender after the crime has been committed and innocent persons have been made to suffer."

The legislature of Minnesota enacted a "Blue Sky Law" at its session in 1917.² Those who drafted this act were fortunate in having before them the decisions of the Supreme Court of the United States, holding constitutional the statutes of the states of Ohio, South Dakota, and Michigan, in the cases of *Hall v. Geiger-Jones Co.*,³ *Caldwell v. Sioux Falls Stock Yards Co.*,⁴ and *Merrick v. Halsey & Co.*⁵

Prior to those decisions, many of the courts of the country, both federal and state, quite uniformly had held the "Blue Sky Laws" of the various states unconstitutional, on one or the other or all of the following grounds: (1) That such a law placed a burden upon interstate commerce; (2) that it deprived a person of liberty or property without due process of law; and (3) that it abridged the privileges of citizens of the United States. Typical of these decisions are those in the cases of *William R. Compton Co. v. Allen*,⁶ *Alabama & N. O. Transp. Co. v. Doyle*,⁷ and *Bracey*

² Laws of Minnesota 1917 Chap. 429.

³ (1917) 242 U. S. 539, 61 L. Ed. 480, 37 S. C. R. 217.

⁴ (1917) 242 U. S. 559, 61 L. Ed. 493, 37 S. C. R. 224.

⁵ (1917) 242 U. S. 568, 61 L. Ed. 498, 37 S. C. R. 227.

⁶ (1914) 216 Fed. 537.

⁷ (1914) 210 Fed. 173.

v. Darst.⁸ In the *Allen* case the Iowa statute was declared unconstitutional in that it unlawfully imposed a direct burden on interstate commerce and denied privileges to citizens of other states which were not imposed upon and which were granted to citizens of the state of Iowa. The Michigan law was held unconstitutional in the *Doyle* case, for the reason that it imposed a burden upon interstate commerce which was beyond the limits of the police power of the state. In the *Darst* case, the West Virginia statute was held unconstitutional, in that it denied the right of citizens of the United States to buy and sell property in the state, deprived them of their property without due process of law, denied them the equal protection of the laws, and imposed an unlawful restraint and burden upon interstate commerce. Although the statutes so declared invalid were amended or new ones enacted, seeking thereby to obviate the constitutional objections raised by the courts, the decisions continued along the same line, until the question was presented to and finally disposed of by the Supreme Court of the United States in the cases cited.

The Supreme Court in the cases involving the statutes of Ohio, South Dakota, and Michigan held that a law enacted by a state legislature, regulating the seller and sale of stocks, bonds, and other securities, for the purpose of preventing fraud, and the enforcement thereof constitute a proper exercise of the police power of the state, even though business purely private in its character may be regulated thereby; and that no right granted by the fourteenth amendment to the federal constitution is thereby violated or impaired. The court in its opinion in the Ohio case, (*Hall v. Geiger-Jones Co.*, *supra*), said upon this subject:

"It will be observed that these cases bring here for judgment an asserted conflict between national power and state power, and bring, besides, power of the State as limited or forbidden by the National Constitution.

"The assertion of such conflict and limitation is an ever-recurring one; and yet it is approached as if it were a new thing under the sun. The primary postulate of the State is that the law under review is an exercise of the police power of the State, and that power, we have said, is the least limitable of the exercises of government. *Sligh v. Kirkwood*, 237 U. S. 52. We get no accurate idea of its limitations by opposing to it the declarations of the Fourteenth Amendment that no person shall be deprived of his life, liberty or property without due process of law or denied

⁸ (1914) 218 Fed. 482.

the equal protection of the laws. *Noble State Bank v. Haskell*, 219 U. S. 104, 110. A stricter inquiry is necessary, and we must consider what it is of life, liberty and property that the Constitution protects. . . . We know that in the concept of property there are the rights of its acquisition, disposition and enjoyment—in a word, dominion over it. Yet all of these rights may be regulated. Such are the declarations of the cases, become platitudes by frequent repetition and many instances of application."

And after stating the terms and provisions of the Ohio law, which are substantially those of the Minnesota law, the court continued:

"It will be observed, therefore, that the law is a regulation of business, constrains conduct only to that end, the purpose being to protect the public against the imposition of unsubstantial schemes and the securities based upon them. Whatever prohibition there is, is a means to the same purpose, made necessary, it may be supposed, by the persistence of evil and its insidious forms and the experience of the inadequacy of penalties or other repressive measures. The name that is given to the law indicates the evil at which it is aimed, that is, to use the language of a cited case, 'speculative schemes which have no more basis than so many feet of "blue sky" '; or, as stated by counsel in another case, 'to stop the sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines and other like fraudulent exploitations.' Even if the descriptions be regarded as rhetorical, the existence of evil is indicated, and a belief of its detriment; and we shall not pause to do more than state that the prevention of deception is within the competency of government and that the appreciation of the consequences of it is not open for our review. *The Trading Stamp Cases*, 240 U. S. 342, 391."

In disposing of the contention that the Ohio statute was a burden on interstate commerce and therefore contravened the commerce clause of the federal constitution, the court in the same case said:

"There is no doubt of the supremacy of the national power over interstate commerce. Its inaction, it is true, may imply prohibition of state legislation but it may imply permission of such legislation. In other words, the burden of the legislation, if it be a burden, may be indirect and valid in the absence of the assertion of the national power. So much is a truism; there can only be controversy about its application. The language of the statute is: 'Except as otherwise provided in this act, no dealer shall, *within this state*, dispose' of certain securities 'issued or executed by any private or quasi-public corporation, co-partnership or association (except corporations not for profit) . . . without first being licensed to do so as hereinafter provided.'

"The provisions of the law, it will be observed, apply to dispositions of securities *within* the State and while information of those issued in other States and foreign countries is required to be filed (Secs. 6373-9), they are only affected by the requirement of a license of one who deals in them *within* the State. Upon their transportation into the State there is no impediment—no regulation of them or interference with them after they get there. There is the exaction only that he who disposes of them there shall be licensed to do so and this only that they may not appear in false character and impose an appearance of a value which they may not possess—and this certainly is only an indirect burden upon them as objects of interstate commerce, if they may be regarded as such. It is a police regulation strictly, not affecting them until there is an attempt to make disposition of them within the State. To give them more immunity than this is to give them more immunity than more tangible articles are given, they having no exemption from regulations the purpose of which is to prevent fraud or deception. Such regulations affect interstate commerce in them only incidentally. *Hatch v. Reardon*, 204 U. S. 152; *Ware & Leland v. Mobile County*, 209 U. S. 405; *Engel v. O'Malley*, 219 U. S. 128; *Brodnax v. Missouri*, id. 285; *Banker Brothers Co. v. Pennsylvania*, 222 U. S. 210; *Savage v. Jones*, 225 U. S. 501; *Standard Stock Food Co. v. Wright*, id. 540; *Trading Stamp Cases*, *supra*. With these cases *International Text Book Co. v. Pigg*, 217 U. S. 91, *Buck Stove & Range Co. v. Vickers*, 226 U. S. 205, and the *Lottery Case*, 188 U. S. 321, are not in discordance."

The court in the opinion in the South Dakota and Michigan cases, *Caldwell v. Sioux Falls Stock-Yards Co.*, *supra*, and *Merrick v. Halsey & Co.*, *supra*, referred to that which was said in the Ohio opinion, in answer to the contentions that the laws in those states did violence to the commerce and other clauses of the federal constitution.

In view of these decisions of the United States Supreme Court, it is settled that no "Blue Sky Law" patterned in all essential respects after the laws of the states of Ohio, South Dakota, and Michigan, having for its purpose the prevention of fraud by regulating transactions in securities, will be held to contravene any of the provisions of the federal constitution. The Minnesota law in all essential respects is the same as the laws passed upon and declared constitutional in the Ohio, South Dakota, and Michigan cases. It has not been called in question in the courts. But in view of the decisions referred to, it would seem that no question can well be raised as to its constitutionality,

and, if raised, surely will be disposed of in harmony with the principles laid down in those decisions.

Under the Minnesota law, a commission of three members, the Public Examiner, Insurance Commissioner, and Attorney General, or an assistant Attorney General appointed by him, was created, and designated as the State Securities Commission of Minnesota. The commission is given power thereunder to employ a secretary and such other assistance as it may deem necessary to enable it to carry out the provisions of the law. It has been in existence since July 1, 1917, and the work thereof, involving the solution of problems in a new field of governmental and administrative endeavor, affords an interesting subject for review in connection with a consideration of the law itself.

Certain securities and transactions are excluded from the operation of the law. These are enumerated in Section 2 thereof and are:

"(a) securities of the United States; or any foreign government; or of any state or territory thereof; or of any county, city, township, district or other public taxing subdivision of any state or territory of the United States or any foreign government; (b) commercial paper, or unsecured negotiable promissory notes, due in not more than eighteen months from their date; (c) securities of public or quasi-public corporations, the issue of which securities is regulated by a public service commission or board of supervising authority of this state or of any state or territory of the United States, or securities senior thereto; (d) securities of federal reserve banks, federal farm loan banks, state, savings or national banks or trust companies, or building and loan associations of this state, or of co-operative associations organized under sections 6479 to 6490 inclusive, general statutes 1913, for operating creameries, cheese factories, or rural telephone lines, where the authorized capital stock never exceeds fifteen thousand dollars, or of insurance companies under the control of the commissioner of insurance complying with chapter 385 General Laws 1913; (e) securities of any domestic corporation organized without capital stock and not for pecuniary gain, or exclusively for educational, religious, benevolent, charitable or reformatory purposes; (f) authorized securities as specified and defined by section 6393 of the General Statutes of 1913 and any amendment thereof, or securities of the classes specified and defined in section 3313, General Statutes 1913; (g) mortgages and notes or bonds secured by mortgage upon real or personal property where the entire mortgage is sold and transferred with the note or notes or bonds secured by such mortgage, or where the indebtedness secured is not more than seventy per cent of the fair value

of the property mortgaged; (h) increase of stock sold and issued to stockholders, or stock dividends; (i) securities sold pursuant to the order of any court; (j) isolated or single transactions."

In discussing stocks, bonds, and other securities, of course reference will be made only to such thereof as are not included within this list.

Investment company and dealer are defined in Section 3. An investment company is declared to be:

"Every person, firm, co-partnership, corporation, company or association (except those exempt under the provisions of this act) whether unincorporated or incorporated, under the laws of this or any other state, territory or government, which shall either himself, themselves or itself, or by or through others engage in the business within the state of Minnesota of selling or negotiating for the sale of any stocks, bonds, investment contracts or other securities, herein called securities, issued by him, them or it, except to a bank or trust company."

A dealer is defined in these words:

"Every person, firm, co-partnership, company, corporation or association, whether unincorporated or incorporated under the laws of this or any other state, territory, or government, not the issuer, who shall within the state of Minnesota sell or offer for sale any of the stocks, bonds, investment contracts, or other securities, herein called securities, issued by an investment company, except the securities specifically exempt under the provisions of this act, or who shall by advertisement or otherwise profess to engage in the business of selling or offering for sale such securities within the State of Minnesota, shall be known for the purpose of this act as a dealer. The term dealer shall not include an owner, not issuer, of such securities so owned by him when such sale is not made in the course of continued and successive transactions of a similar nature, nor one who in a trust capacity created by law lawfully sells any securities embraced within such trust."

The law is framed to give the commission supervision over investment companies and dealers, as just defined, and the sale by them of stocks, bonds, and other securities, sufficient to enable the commission to prevent the perpetration of fraud in the sale thereof within the state; and, to this end, the violation of any of the provisions of law is made by Sec. 17 thereof a crime, punishable by a fine, imprisonment, or both.

The work of the commission has to do largely with investment companies. Under the definition given in the law, as above

set forth, any person or concern not included within the exemptions heretofore referred to, no matter how or where organized and no matter in what business engaged or where, selling or offering for sale, stocks, bonds, or other securities issued by him or it, in this state, except to a bank or trust company, is an investment company. A mining corporation, organized under the laws of Delaware, operating a mine in Montana, upon sending its agents into this state and through them offering shares of its capital stock for sale, becomes an investment company. A corporation organized under the laws of this state, operating a small manufacturing plant in some rural community, upon selling or offering for sale its corporate stock within the state, becomes an investment company. Investment company as so defined includes all forms of business, industrial, and commercial enterprises, except those exempt, selling or offering for sale their stocks, bonds, or other securities within the state.

A dealer is required to register, apply to the commission for a license to sell securities in the state, and in connection therewith furnish certain information, the same as an investment company, but, if he is of good business repute and the securities which he has to sell are those of licensed investment companies, he encounters no difficulty in securing a license. If, however, he has for sale the stock of an unlicensed company, which has never itself made application for a license, it is necessary for him to conduct proceedings through the commission the same as though the investment company itself were the applicant. With this statement relative to a dealer, we will henceforth confine our attention to the investment company.

An investment company, desiring to sell its stock or other securities in the state, must under Sections 4 and 6 register with the commission and make application for a license to so do, and in connection therewith furnish the commission with the information therein required. These sections, so far as they relate to information to be furnished, read as follows:

"Sec. 4. . . The investment company's . . . name, residence and business address, the general character of the securities to be sold or dealt in, the place or places where the business is to be conducted within this state, and where the business in this state is not to be conducted by the investment company . . . in person, then the names and addresses of all the persons in charge thereof. Said investment company shall . . . furnish said

Commission with such other information in addition to that above specified as said commission shall deem necessary in order to thoroughly acquaint such commission with the honesty and good faith of such . . . investment company, and the character of the business of said investment company. . . .”

“Sec. 6. Every investment company . . . who shall . . . promote . . . the sale or distribution of any such securities . . . shall . . . file a statement in writing . . . describing fully such securities, and furnishing to said commission true copies of all prospectuses, circulars, and advertisement used, or to be used in such sale or promotion, and said commission may make such investigation thereof and require such further information or proof with respect thereto as it may deem necessary to determine the character of such securities or of such promotion.”

In addition to the information required under these two sections of the law, the investment company is always called upon to file copies of its articles of incorporation, by-laws, stock subscription contract, stock certificate; a list of officers, directors, and of promoters who each own more than five per cent of the capital stock; a statement showing the consideration received for the securities issued, and subscribed but unissued; a statement of assets and liabilities; and a profit and loss statement. The information required to be furnished both by the law and the commission, exclusive of such as might be contained in documents, is furnished upon blanks prepared by the commission and supplied to the applying investment company.

Upon receiving such application and information, the commission considers the same and either grants or denies the application or defers action until the applicant or securities offered or both have been further investigated, and in this connection the commission, under Sec. 7:

“may also make such special investigations as it may deem necessary in connection with the promotion or sale of any such securities to the end that the commission may be put in possession of all facts and information necessary to qualify it to properly pass upon all questions that may properly come before it, and to determine if the same is in violation of this act or of any of the acts of the legislature described in section 9 hereof, and to that end it shall have power to issue subpoenas compelling the attendance of any person and the production of any papers and books for the purpose of such investigation, and shall have power to administer oaths to any person whose testimony may be required in such investigation. It may also make or have made

under its direction a detailed examination and report of the property, business and affairs of such investment company, which investigation and examination shall be at the expense of such investment company, or of the dealer seeking to sell such securities. It may cause an appraisal to be made at the expense of said investment company or dealer, of the property of said investment company."

The ultimate question for determination in considering an application is always: Will the sale of the particular security work a fraud on the purchaser? The commission has interpreted the law to mean that the sale of a security must be classed as fraudulent where the purchaser thereof does not have a fair chance to gain by the investment. It is not sufficient that the money invested be secure against loss; there must be a fair chance to gain. A fair chance to gain may be precluded by the fact that the security purchased represents simply the device used by one with no assets of any kind, but with a visionary gold mine or something equally as attractive to delude the public, in furtherance of a deliberately planned fraud to enable him to accumulate wealth. There may be no chance to gain by reason of the fact that there is no possible chance of success on the part of the issuer of the securities, even though the same may be sold in the best of good faith. It is for the commission to ascertain the non-existence of such facts, before permitting the sale of securities. When an oil company applies for a license to sell its stock, the first question for the commission to determine is whether the company owns land containing oil, in such quantity as to justify the development of the property. Other questions must also be considered. To determine these matters, a geologist familiar with oil geology is employed. He goes to the land in question, determines the prospects with reference to the presence, quantity, and depth of oil; ascertains the cost of drilling and other details; and submits a written report to the commission. The same plan is carried out with reference to a mining company, applying for a license to sell stock. A mining engineer is employed, who investigates and reports to the commission relative to the quantity and grade of ore in the land of the company, the experience and ability of the manager, transportation facilities, location as to markets and labor supply. A man builds a farm tractor, organizes a corporation, and applies to the commission for a license to sell the stock thereof, to enable him to manufacture and place his tractor on the

market. The commission sends a mechanical engineer to inspect the tractor, and he reports with reference thereto. A man engaged in business, incorporated, a "going concern," may desire to sell stock to increase his business or for other reasons. The commission, in such case, wants to know all about the business, its past experiences, present condition, and future prospects. The commission obtains this information. The purpose in mind in all these investigations is to place before the commission the facts in a particular case, so that the commission may determine that the investor in the securities offered may not only not lose what he puts in but have a fair chance to make a reasonable profit on the investment. If the commission can not so determine, it refuses to permit the securities to be sold, for to sell the same would work a fraud on the investor. This does not mean that the commission attempts to remove ordinary business hazards, or limits the right to engage in speculative ventures so long as they are fairly conceived and honestly conducted.

After a license to sell securities has been issued, the commission may at any time, by reason of a violation of the law or some lawful order of the commission, suspend and in some cases revoke such license. Upon a denial of an application or a suspension or revocation of a license, the applicant or licensee, as the case may be, may request a hearing. The commission is required to grant such request. If the commission decides against the applicant or licensee, the matter may be taken to the supreme court of the state on certiorari proceedings.

The commission always, in case it issues a license to a company, issues the same upon one or more conditions. The amount of stock which may be sold is always limited. A company may apply for a license to sell a half-million dollars worth of stock. If upon investigation it is found that one hundred thousand dollars is all the company actually needs, it is licensed to sell not to exceed one hundred thousand dollars worth of its stock. Frequently it happens that a company's condition is such as not to justify a sale of its common stock, but to justify a sale of its preferred stock, the same being preferred as to dividends, and assets in case of liquidation. The company is licensed to sell a certain amount of preferred stock only. A company may ask to be permitted to sell its stock for an amount considerably above par value. An examination discloses that the stock is worth par and no more.

The company is permitted to sell its stock at par, but for nothing in excess thereof. Other conditions are sometimes imposed, two of which deserve special mention.

The commission, while recognizing that those who are promoting a legitimate enterprise are entitled to compensation for their services in that behalf, also recognizes that they should not be paid more than the reasonable value of such services. The custom among many promoters, prior to the enactment of the "Blue Sky Law," was to take fifty per cent, or even more, of the amount obtained from the sale of stock, to cover promotion expenses. This meant that only half of the selling price was used to develop and promote the business. A company which commenced business under such circumstances had an impairment of fifty per cent of its capital at the outset; naturally it was difficult to overcome such impairment and many failed to do so. Consequently the commission, when issuing a license, fixes the amount which may be charged for promotion, in the case of mining and oil companies, not to exceed twenty per cent of the sale price of the stock; industrial concerns, not to exceed fifteen per cent; and financial corporations, not to exceed ten per cent.

The commission, before issuing a license to sell a given security, must find that the same is worth the price at which it is to be sold. This necessitates a careful consideration of the assets of the applying company. At what figures can assets be valued? Where they consist in a large part of intangible assets, such as patents, secret processes, or good will, it is nearly always difficult, if not impossible, to determine the value thereof. Applicants always have exaggerated ideas with reference to the value of such assets. They place the value thereof at big figures and issue large blocks of stock in payment therefor. In such cases, the commission usually requires one of two things before issuing a license, either the cancellation of a large part of such stock or the placing thereof in the hands of a trustee, under a written agreement, to be held by him until the value of the assets for which the stock was issued has been established on an earnings basis; while the stock remains in the hands of the trustee, the owners thereof are not permitted to participate in the earnings of the company. As soon as such earnings show that the intangible assets referred to are worth an amount equal to the par value of the stock issued therefor,

the trust agreement is terminated. The effect of requiring the escrowing of stock, if it may be termed as such, is to protect investors and at the same time not work an injustice on the persons holding the stock issued in payment of assets of unknown but occasionally of great value.

The investigations referred to are made and the conditions imposed by the commission under authority conferred by the "Blue Sky Law." As heretofore stated, the principle upon which legislation of this kind is sustained is that such legislation is a proper exercise of the police power of the state, its right to protect its citizens against fraud growing out of the sale of securities. That inconveniences may result from the enforcement of such legislation was recognized by the United States Supreme Court in its opinion in the case of *Merrick v. Halsey & Co.*, supra, but in that connection the court said:

"It burdens honest business, it is true, but burdens it only that under its forms dishonest business may not be done. This manifestly cannot be accomplished by mere declaration; there must be conditions imposed and provision made for their performance. Expense may thereby be caused and inconvenience, but to arrest the power of the State by such considerations would make it impotent to discharge its functions. It costs something to be governed."

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